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Paper No. 14

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In re Application of:
Juergen Kleinschmidt
Serial No.: 09/574,921
Filed: May 19, 2000
Attorney Docket No.: **LMPY-6710**

DECISION ON PETITION
TO WITHDRAW HOLDING
OF ABANDONMENT

This is a decision on the petition, filed September 4, 2002, to withdraw the holding of abandonment in the above-identified application under 37 CFR § 1.181, and to accept the payment of issue fee as being timely filed. No petition fee is required.

The petition is **GRANTED**.

The application was held abandoned for failure to timely pay the required fee(s) in response to the Notice of Allowance and Fee(s) Due (Notice) mailed on March 26, 2002. A Notice of Abandonment was mailed on August 8, 2002.

Petitioner asserts that the Notice mailed on March 26, 2002, was not received until June 28, 2002, after the period for paying the fees has expired. To support this assertion, petitioner provided a statement attesting that a search of the file jacket and docket records indicated that the Office action was not received until June 28, 2002 and a copy of the mail log where the Notice would have been entered had it been received. The copy of the mail log provided is for the time period of March 27, 2002 to August 8, 2002 (153 pages total). Petitioner also asserts that the Notice received on June 28, 2002 bears one stamp which reads "RECEIVED APR 12 2002 TECHNOLOGY CENTER 2800," and another which reads "Match & Return," and concludes that the stamps constitute evidence that the Notice was mailed but returned undelivered to the USPTO on April 12, 2002. The Notice was then re-mailed at a later but unknown date without the time period for payment of the fees being reset. Besides the date stamps as noted above, the copy of the Notice received by petitioner also bears a receipt stamp which indicates that it was received by petitioner on June 28, 2002, after the period set for paying the fees has expired.

A review of the file record and the evidence submitted indicates that the Notice mailed March 26, 2002 was apparently returned undelivered by the US Post Office on April 12, 2002. The

Notice was then re-mailed without any of the information and requirements set therein being changed or modified, including the original mail date of April 12, 2002.

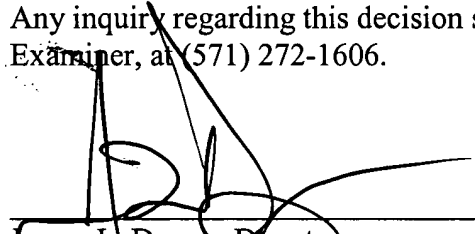
Pursuant to M.P.E.P. § 710.13, when a letter is returned to the USPTO because the US Post Office has not been able to deliver it, every reasonable means should be used to ascertain the correct address and forward the letter again after stamping "remailed" thereon. The period running against the application begins with the date of remailing.

It is apparent from the Notice, received by petitioner on June 28, 2002, that it was remailed without the time period for paying the fees being reset from the remail date. In fact, the date of the remail was not indicated on the Notice pursuant to M.P.E.P. § 710.13 and the file record does not reveal the date it was remailed.

For the above stated reasons, the three-month time period for paying the fees is hereby reset, retroactively, to run from the date the Notice was received by petitioner and expired September 28, 2002. Accordingly, the issue fee and the formal drawings filed September 4, 2002, are accepted as being timely filed and the holding of abandonment vacated.

With the holding of abandonment vacated and the issue fee accepted as being timely filed, the application file ready for patenting and is being forwarded to Publishing Division for issuance of a patent.

Any inquiry regarding this decision should be directed to Hien H. Phan, Special Program Examiner, at (571) 272-1606.



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